

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #14	CCRB Case #: 201501048	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 02/06/2015 9:30 PM	Location of Incident: § 87(2)(b) & 23rd Precinct stationhouse	Precinct: 25	18 Mo. SOL 8/6/2016	EO SOL 8/6/2016	
Date/Time CV Reported Thu, 02/12/2015 2:29 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/13/2015 2:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Victor Charles	06096	941538	023 PCT
2. An officer			023 PCT
3. Officers			023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Washington Zurita	00000	918509	023 PCT
2. POM David Wheeler	16703	947606	023 PCT
3. POM Bryan Carney	26009	945555	023 PCT
4. POM Christopher Banas	04493	934447	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Victor Charles	Discourtesy: At § 87(2)(b) in Manhattan, PO Victor Charles spoke rudely to § 87(2)(b)	
B.POM Victor Charles	Force: At § 87(2)(b) in Manhattan, PO Victor Charles used a chokehold against § 87(2)(b)	
C.POM Victor Charles	Force: At § 87(2)(b) in Manhattan, PO Victor Charles struck § 87(2)(b) with an asp.	
D. An officer	Force: At § 87(2)(b) in Manhattan, an officer struck § 87(2)(b)'s face against the ground.	
E. An officer	Force: At § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b)	
F. Officers	Discourtesy: At the 23rd Precinct stationhouse, officers spoke rudely to § 87(2)(b)	

### Case Summary

On February 6, 2015, at approximately 9:30 p.m., § 87(2)(b) and his wife, § 87(2)(b) got into a dispute in front of their residence at § 87(2)(b) § 87(2)(b) in Manhattan. PO Victor Charles and Lt. Washington Zurita of the 23<sup>rd</sup> Precinct were driving by and saw § 87(2)(b) strike § 87(2)(b) in the face. § 87(2)(b) fled inside the building after seeing the officers and unsuccessfully attempted to close the front door behind him. PO Charles joined § 87(2)(b) in the building's small vestibule and stood behind him while Lt. Zurita requested backup over the radio. Additional officers arrived and began entering the vestibule after approximately two minutes. PO Charles then allegedly said to § 87(2)(b) "Man, fuck that" (**Allegation A**). PO Charles held his asp in his right hand. He reached over § 87(2)(b)'s shoulders with both hands and pulled him backwards to the ground. In the process of pulling § 87(2)(b) to the ground, PO Charles put his asp against § 87(2)(b)'s neck (**Allegation B**). § 87(2)(b) fell to a seated position and PO Charles struck him in the lower back with the butt of his asp multiple times (**Allegation C**). Officers moved § 87(2)(b) onto his stomach and handcuffed him. An unidentified officer then allegedly grabbed the back of § 87(2)(b)'s head and struck his face against the ground (**Allegation D**). An unidentified officer also allegedly struck the left side of § 87(2)(b)'s jaw with his hand (**Allegation E**). A surveillance camera recorded video footage of § 87(2)(b)'s interaction with PO Charles and other officers inside the vestibule (BR01; BR02; BR03).

§ 87(2)(b) was arrested for assault, resisting arrest, and endangering the welfare of a child (BR04). He was transported to the 23<sup>rd</sup> Precinct stationhouse, where unidentified officers allegedly said to him, "Shut the fuck up," "Shut your fucking mouth," and "Don't fucking talk unless we talk to you" (**Allegation F**).

### Mediation, Civil and Criminal Histories

- The case was ineligible for mediation as § 87(2)(b) was arrested and his criminal case is ongoing.
- On June 8, 2015, the NYC Comptroller's office provided a copy of a Notice of Claim filed by § 87(2)(b) regarding the incident (BR05). § 87(2)(b) sought \$500,000 for unlawful seizure and arrest and excessive force. A 50-H hearing has been scheduled for § 87(2)(b) (BR20).
- The criminal case resulting from § 87(2)(b)'s arrest is ongoing as of § 87(2)(b). He is charged with § 87(2)(b) (BR06).
- § 87(2)(b) (BR07).

### Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (BR08).
- PO Victor Charles has been a member of the NYPD for nine years and has had ten previous CCRB allegations involving four cases with no substantiated allegations (see officer history). One case from 2010 with two allegations has recently been reopened and

is pending. In one previous case, CCRB #201104637, an allegation of “Force-Nightstick as club” was closed as unsubstantiated.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

The video shows that PO Charles was the officer who brought § 87(2)(b) to the ground and struck him with an asp. As such, allegations of force are pleaded against him. § 87(2)(b) alleged that the officer who brought him to the ground also used discourtesy, so an allegation of discourtesy is pleaded against PO Charles.

§ 87(2)(b) did not see and could not describe the officer or officers who allegedly struck his face against the ground and struck him in the face with a hand. None of the officers interviewed admitted to making the alleged actions or to seeing any other officer do so. The video footage does not show any officer committing either allegation. As a result, the investigation was unable to positively identify the subject officer for either allegation, and both allegations are pleaded against “an officer.”

§ 87(2)(b) alleged that officers used profanity when speaking to him in the cells at the 23<sup>rd</sup> Precinct stationhouse. He could not describe any of the subject officers or recall anything about them, and said that different officers kept coming in and out of the cell area. None of the officers interviewed admitted to using profanity with § 87(2)(b) at the stationhouse or to hearing any other officers do so. As a result, the investigation was unable to positively identify the subject officers, and an allegation of discourtesy is pleaded against “officers.”

#### **Allegations Not Pleaded**

- **Restriction of Breathing:** Although § 87(2)(b) alleged that PO Charles pulled him down by putting his asp against his neck, he stated that his breathing was never restricted. As such, an allegation of restriction of breathing was not pleaded.

#### **Recommendations**

- **Allegation A—Discourtesy: At § 87(2)(b) in Manhattan, PO Victor Charles spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that just before PO Charles brought him to the ground, he said, “Man, fuck that” (BR09). PO Charles denied using profanity with § 87(2)(b) and denied making the alleged statement (BR10). In fact, he recounted that § 87(2)(b) made the statement. Lt. Zurita, PO Wheeler, PO Carney, and PO Banas all denied hearing PO Charles use profanity with § 87(2)(b) (BR11; BR12; BR13; BR14).

§ 87(2)(g)

- **Allegation B—Force: At § 87(2)(b) in Manhattan, PO Victor Charles used a chokehold against § 87(2)(b)**

§ 87(2)(b) alleged that PO Charles reached around his neck, placed his asp on the right side of his neck, held both ends of the asp, and pulled back on the asp to pull § 87(2)(b) backwards to the ground. § 87(2)(b) provided a photograph taken shortly after he was released from custody on February 11, 2015, which shows a red bruise on the right side of his neck (BR15).

§ 87(2)(b)'s medical records do not note any injury to his neck. The narrative section of the Ambulance Call Report recounts that § 87(2)(b) was violent and aggressive, and that he refused to speak to EMS personnel until ESU officers arrived and calmed him down. He had an

odor of alcohol on his breath but would not say if he had consumed any alcohol or drugs. He said he had a slight headache and said he was hit in the head but would not specify with what. He denied neck or back pain. EMS personnel observed a small laceration with swelling and bleeding on his right temporal lobe (see Privileged Documents). § 87(2)(b)'s records from § 87(2)(b) on § 87(2)(b), only note that § 87(2)(b) had a one-centimeter superficial laceration on his right forehead, which was closed with a topical skin adhesive. The records do not note any other injuries, on § 87(2)(b)'s neck or elsewhere (see Privileged Documents). Requests to the 23<sup>rd</sup> Precinct and the Manhattan Court Section for a Medical Treatment of Prisoner form were met with negative results. § 87(2)(b)'s records from § 87(2)(b) on § 87(2)(b), indicate that he had tenderness in his left foot, headaches, wrist pain, and pain and hyperpigmentation in his lower back (see Privileged Documents). With regard to § 87(2)(b)'s neck, the records from the § 87(2)(b) note only that he had decreased range of motion in his neck.

The video footage and screenshots from that footage show the technique PO Charles used to bring § 87(2)(b) to the ground (BR02; BR16). PO Charles clearly reaches over § 87(2)(b)'s right shoulder with his right hand, in which he holds his asp. The asp points horizontally across § 87(2)(b)'s front. PO Charles' left hand and § 87(2)(b)'s left shoulder are hidden from view, and it cannot be determined definitively from the video whether PO Charles grabs the other end of the asp with his left hand. PO Charles suddenly pulls backward and § 87(2)(b) is jerked backward and falls to the ground. Screenshots D and E clearly show that PO Charles' right hand is holding his asp and not grabbing § 87(2)(b)'s right shoulder (BR16). The asp appears to press against the right side of § 87(2)(b)'s neck.

During PO Charles' CCRB interview on June 2, 2015, he initially said that multiple officers grabbed § 87(2)(b) and pulled him to the ground. He could not recall which officers assisted him in pulling § 87(2)(b) down. He said that he grabbed § 87(2)(b) somewhere on his upper body. He could not recall with any greater specificity where on § 87(2)(b)'s body he grabbed or if he grabbed him with one or two hands. He said that his physical interaction with § 87(2)(b) was akin to wrestling or grappling. PO Charles later viewed the video footage of the incident and six screenshots prepared for his interview (BR17). PO Charles disagreed when the investigator said that the video appeared to show him putting his asp across § 87(2)(b)'s neck and pulling on both ends of the asp to bring him to the ground. He said, "Might have put it around his shoulder, but I don't know his neck." He said he did not have any intention, while standing behind § 87(2)(b) to use his asp to subdue § 87(2)(b). PO Charles pointed out that the screenshots showed that his asp was actually on § 87(2)(b)'s shoulders and not on his neck. He said, "Keep in mind, if you're making a motion, the intention's to grab him on the shoulder. If you're making a motion, it may slip or your hand may move up." The investigator asked if that meant that he intended to bring § 87(2)(b) down by putting his asp around § 87(2)(b)'s shoulder. PO Charles said no and reiterated that he did not recall bringing § 87(2)(b) to the ground in such a manner. However, he also said, "If there's an intention to place something, it was placed on his shoulders." The investigator asked if viewing the footage refreshed PO Charles' recollection and he first said yes before again saying that he did not have an independent recollection of how he brought § 87(2)(b) to the ground. He insisted that he did not make a conscious decision to use his asp to bring § 87(2)(b) to the ground and that the asp was simply in his hand because he had no opportunity to stow it safely during the incident.

The investigator asked PO Charles if he was claiming that he placed his asp on § 87(2)(b)'s shoulder and not his neck. PO Charles pointed to screenshot #1 and said that it showed his asp on § 87(2)(b)'s shoulder and across his chest. He insisted that he did not intend to place the asp there and was only speaking about its position in the screenshot. However, he then stated, "I placed it in a position that I could get the greatest leverage on his shoulders. That's the largest part of his body to bring down." The investigator again asked if PO Charles was saying that he

intended to place his asp across § 87(2)(b)'s shoulders. PO Charles said that he had not intended to use his asp at all and that it just happened to be in his hand, and reiterated that he did not independently recall his actions. However, it appeared to him that the screenshot showed that his asp was on § 87(2)(b)'s shoulder.

The investigator asked PO Charles if he grabbed the other end of the asp with his left hand. PO Charles first said, "That may be the case," but also insisted that he did not know if he did so. He then pointed to screenshot #3 and said that he did not grab the other end of the asp and that his left hand could not be seen in the screenshot. He then retracted that assertion and said that he did not recall if he grabbed the other end, but that in the screenshot he did not seem to be doing so. Finally PO Charles said, "I'm figuring I'm grabbing his shoulder, and grabbing him, and pulling him back from his shoulder. The asp just happened to be in my hand cause it's there. I can't get rid of it." He demonstrated on his legal representative by standing behind her while holding an umbrella in his right hand. He reached over her right shoulder and held the umbrella in his fist such that it was across her chest. He held the top of her left shoulder with his left hand.

During his CCRB interview on July 1, 2015, Lt. Zurita recalled that PO Charles and other officers grabbed § 87(2)(b) to bring him to the ground, but could not recall which part of § 87(2)(b)'s body PO Charles grabbed, nor could he describe how the officers brought § 87(2)(b) down. He denied seeing PO Charles place his asp on § 87(2)(b)'s neck when he brought him to the ground. He viewed the video footage and said that it appeared to him that PO Charles placed his asp across § 87(2)(b)'s chest and used it as leverage in a takedown maneuver. Lt. Zurita pointed out that, in screenshots #1-#6, he was looking away from PO Charles and § 87(2)(b). He explicitly stated that he did not see PO Charles bring § 87(2)(b) to the ground and that his conclusion that PO Charles placed his asp across § 87(2)(b)'s chest was based upon viewing the video footage and screenshots.

During his CCRB interview on July 14, 2015, PO Wheeler recounted that PO Charles grabbed § 87(2)(b)'s upper back or shoulders with both hands and pulled down and to his left, which caused both § 87(2)(b) and him to fall to the ground. He denied seeing PO Charles place his asp against § 87(2)(b)'s neck. After PO Wheeler viewed the video footage, the investigator asked him if he saw PO Charles grab the other end of his asp with his left hand. PO Wheeler replied, "Not that I remember. I remember him putting his arms up, and then from what I remember, his left hand was on his shoulder, and I thought that this hand would have been grabbing his right shoulder." The investigator asked PO Wheeler if he could say categorically that PO Charles' left hand was grabbing § 87(2)(b)'s shoulder and not the end of his asp. PO Wheeler twice replied, "That's how I remember it."

During his CCRB interview on July 14, 2015, PO Carney claimed that he, PO Charles, and PO Wheeler participated in bringing § 87(2)(b) to the ground. He could not recall where he touched § 87(2)(b) in order to bring him down. He denied seeing any officer pull § 87(2)(b) to the ground by placing an asp across his neck. He viewed the video footage and again stated that he did not recall seeing PO Charles bring § 87(2)(b) to the ground by placing an asp on his neck.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 203-11 expressly forbids officers from using chokeholds or from applying any pressure to an individual's throat or windpipe that may prevent or hinder breathing or reduce intake of air (BR18).

§ 87(2)(g)

• **Allegation C—Force: At § 87(2)(b) in Manhattan, PO Victor Charles struck § 87(2)(b) with an asp.**

It is undisputed that PO Charles struck § 87(2)(b) with an asp.

§ 87(2)(b) alleged that, after he was handcuffed and lying face down on the ground, he was struck in the lower back approximately 8-10 times. He believed he was struck with a radio but did not see the object. He provided a photograph taken shortly after he was released from custody which shows circular bruises on his lower back (BR19). As previously discussed, the ACR and the records from § 87(2)(b) do not document the bruising on his back. The records from § 87(2)(b) note that he had pain and hyperpigmentation on his lower back. He was diagnosed with lumbago and prescribed a painkiller (see Privileged Documents).

The video footage shows that § 87(2)(b) falls backward onto his rear and PO Charles kneels down behind him. PO Charles appears to strike § 87(2)(b) with his asp approximately seven times. § 87(2)(b)'s upper body is obscured and it is difficult to determine both whether he is sitting up or prostrate and where on his body PO Charles strikes with the asp.

PO Charles recounted that he struck § 87(2)(b) with the butt of his asp by using a jabbing motion, as there was not enough room in the vestibule to swing the asp. He struck § 87(2)(b) in the shoulder. He could not recall how many times he struck § 87(2)(b) but knew he did so more than once. He explained that § 87(2)(b) was holding himself up from the ground by one arm. The investigator asked if § 87(2)(b) came down on his back, front, or side, and PO Charles recounted, "At the end of the day, he was holding one hand like a stiff arm, instead of like having to roll fully on the ground. Whatever seated or kneeling position he was in, and stiff-arming one of his hands not to fully break to the ground." PO Charles used his asp to stop § 87(2)(b) from holding himself up with his arm and to force him to lie flat on his stomach. After viewing the video footage in its entirety, PO Charles was shown the portion in which he strikes § 87(2)(b) with his asp, and the investigator advanced through the relevant portion frame by frame. PO Charles explained that § 87(2)(b) was sitting on his rear, had his feet out in front of him, and had his hands on the ground. The officers attempted to make § 87(2)(b) lie on his stomach but he kept himself in a seated position. PO Charles' legal representative asked him, "So you're using that to collapse his arm?" PO Charles replied, "Right. I'm trying to jab at this arm to break, when I say break the position he has, so he rolls down into that position." The investigator

asked PO Charles if he ever struck any part of § 87(2)(b)'s body with his asp other than § 87(2)(b)'s arm and shoulder. PO Charles replied, "From my recollection, no. From the video, it appears to be no also." PO Charles did not see anything take place during the incident that would have caused bruising on § 87(2)(b)'s lower back. He denied seeing any other officer strike § 87(2)(b) with an asp, radio, or any other blunt instrument.

Lt. Zurita recounted that § 87(2)(b) after being brought to the ground, stiffened up and refused to allow officers to grab his arms and pull them behind his back. He did not recall seeing any officer strike § 87(2)(b) with an asp or any other object. Officers successfully handcuffed § 87(2)(b) within a minute of bringing him to the ground.

PO Wheeler could not recall how § 87(2)(b) was positioned when he was brought to the ground. PO Wheeler attempted to grab § 87(2)(b)'s right arm but could not pull it out from where § 87(2)(b) had it clenched under his body. He denied seeing any officer strike § 87(2)(b) with an asp. PO Wheeler viewed the video footage and pointed out that at 21:25:51, § 87(2)(b) was sitting on his rear with his legs extended out. § 87(2)(b) was holding his arms tight against his chest and PO Wheeler tried to pull his right arm free. PO Wheeler denied seeing § 87(2)(b) lock and brace an arm against the ground to hold himself up.

PO Carney denied seeing any officer strike § 87(2)(b) with an asp. He could not recall how § 87(2)(b) was positioned when he first fell to the ground, but recalled that he was eventually on his stomach. After § 87(2)(b) was facedown, he resisted by tensing up, pulling his arms away from officers, and tucking his hands underneath his body.

As § 87(2)(b) was already facedown when PO Banas arrived, PO Banas did not see PO Charles strike § 87(2)(b) with his asp.

§ 87(2)(g)

Patrol Guide Procedure 203-11 requires that officers use only that amount of force necessary to overcome resistance when effecting an arrest (BR18).

§ 87(2)(g)

- **Allegation D—Force: At § 87(2)(b) in Manhattan, an officer struck § 87(2)(b)'s face against the ground.**
- **Allegation E—Force: At § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b)**

As previously discussed, the investigation was unable to identify the subject officer.

§ 87(2)(g)

- **Allegation F—Discourtesy: At the 23rd Precinct stationhouse, officers spoke rudely to § 87(2)(b)**

As previously discussed, the investigation was unable to identify the subject officers.

§ 87(2)(g)

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Squad: 14

Investigator: \_\_\_\_\_ Daniel Giansante \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date